

# SENATE BILL REPORT

## 2SSB 5662

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As Amended by House, April 15, 2011

**Title:** An act relating to establishing a preference for resident contractors on public works.

**Brief Description:** Concerning preferences for in-state contractors bidding on public works.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Conway, Chase, Kline, Shin, Keiser, Kohl-Welles, White, Roach, Hobbs, Nelson, Prentice, Haugen and Fraser).

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/15/11, 2/21/11 [DPS-WM, DNP].

Ways & Means: 2/25/11 [DP2S, DNP, w/oRec].

Passed Senate: 3/03/11, 32-13.

Passed House: 4/05/11, 87-8; 4/15/11, 93-2.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5662 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

**Staff:** Mac Nicholson (786-7445)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5662 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Hatfield, Hewitt, Holmquist Newbry, Kastama, Keiser, Kohl-Welles, Regala, Rockefeller and Tom.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass.  
Signed by Senators Honeyford and Schoesler.

**Minority Report:** That it be referred without recommendation.  
Signed by Senator Pflug.

**Staff:** Brian Sims (786-7431)

**Background:** Contracts for public works projects are generally awarded to the responsible bidder submitting the lowest responsive bid. A responsible bidder must be licensed; have a current state unified business identifier number; if applicable; have industrial insurance coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number; and not be disqualified from bidding based on noncompliance with licensing requirements, state apprenticeship requirements, or prevailing wage violations.

**Summary of Second Substitute Bill:** The Department of General Administration (GA) must survey the 50 states to determine which ones provide advantages for their in-state contractors bidding on public works projects. The initial survey results are due January 1, 2012, for states where contractors have often bid on public works projects in Washington State. The survey of the remaining 50 states must be completed by January 1, 2013. The department must distribute the results of the survey along with notification of the requirements of this act to all state and local agencies with authority to procure public works.

Any bidding process for public works in the state in which a bid is received from a contractor from a state that is identified in the survey as providing an in-state contractor advantage must provide a comparable advantage for contractors from Washington State only with respect to comparing in-state contractors' bids to the bids received from contractors from that state.

GA must adopt rules to implement the reciprocity provisions and recommend draft legislation to conform existing law to the intent of this act. The reciprocity provisions do not apply if they contradict requirements for federal funding.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection):** PRO: The goal of this bill is to reinvest Washington tax dollars in Washington employers and workers. The bill does what other states have already done. Courts have supported states' rights to provide an advantage to and preference for local bidders. Other states and local governments have similar preference provisions. This bill will put Washington residents back to work. The construction unemployment rate is high, and this bill levels the playing field with other states. The bill keeps public construction money in-

state and is needed more than ever now. Capital budget dollars are being sent out-of-state while in-state construction workers are unemployed and losing their homes. Out-of-state contractors bring out-of-state workers to work on in-state projects. Tax dollars should stay in the state. In-state contractors are very competitive. Construction workers are hurting, and want to get back to work. This bill creates jobs in Washington.

CON: Contractors weren't involved in drafting the legislation. Times are difficult, but this kind of protectionism was tried in the state before and didn't accomplish what it intended to do. This will increase costs for contractors and projects could cost up to 7 percent more. The 85 percent threshold in the bill would exclude many in-state contractors who have a long history of doing business in Washington and those who do a lot of work out-of-state. Reciprocal preference statutes would negatively impact in-state contractors who do out-of-state work, particularly for those along the borders. The bill is unconstitutional in multiple ways. The bill creates a four part test that is problematic. School districts are concerned about the impact on the bidding environment, and would like to get as many bids on a job as possible. Federal funding for transportation projects includes federal requirements for open competition, and the language in the bill is in conflict and would preclude receipt of federal funding.

OTHER: In-state contractors should be getting the job, but there are some concerns as the definitions in the bill would exclude some in-state contractors who do work in-state and out-of-state. Large administrative costs are created with the certification requirements imposed on GA, as well as revocation of certification. This bill addresses only general contractors, and wouldn't affect subcontractors. Local governments in border areas rely on out-of-state contractors to get experienced contractors on public works. Costs will be increased, and now is not the time to increase costs.

**Persons Testifying (Labor, Commerce & Consumer Protection):** PRO: Randy Loomans, International Union of Operators; Dave Johnson, Washington Building and Construction Trades; Nicole Grant, Stephanie McPherson, International Brotherhood of Electrical Workers 46; Evan Leonard, Artisan Electric; Cody Arledge, Sheet Metal Workers 66.

CON: Van Collins, Associated General Contractors; Charlie Brown, Puget Sound School Coalition; Jeff Carpenter, Washington State Department of Transportation.

OTHER: John Lynch, GA; Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association; Steve Lindstrom, Sno-King Water District Coalition; Marcia Fromhold, Evergreen and Vancouver school districts and Educational Service District 112.

**Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means):** PRO: This gives Washington contractors a 5 percent advantage. Eight percent of public works goes to out-of-state contractors. This will address the issue of out-of-state contractors putting undue burden on our workers compensation and unemployment insurance systems. GA says the substitute will be about half the cost of the original bill. There is 30 percent unemployment among construction workers. Twenty-two states have in-state contractor preferences. State taxes should be spent on our own in-state contractors.

CON: This will result in a 5 percent disadvantage for Washington contractors bidding in Oregon. Washington contractors already have an advantage for bidding because it is cheaper because our equipment and staff are here. Washington had a bid preference from 1933 which was repealed in 1967. All a bid preference does is create Balkanization. The fiscal note underestimates the costs because it doesn't account for rulemaking costs and legal costs of appeal.

**Persons Testifying (Ways & Means):** PRO: Nichol Grant, Certified Electrical Workers of Washington; Rebeca Johnson, Washington State Labor Council; Randy Lomans, International Union of Operating Engineers 302, Operators.

CON: Robert J Thode, Fire Mountain Farms, Inc.; Van Collins, Associate General Contractors.

**House Amendment(s):** The resident contractor preference survey to be conducted by GA is to be done in one stage (rather than two), and is to be completed by November 1, 2011. GA must report on the results of the survey, and provide recommendations necessary to implement the intent of the legislation, to the Legislature by December 1, 2011.

A nonresident contractor from a state that provides a percentage bid preference must receive a comparable percentage disadvantage when bidding on an in-state public works project. A nonresident contractor is a contractor that does not have a physical office located in-state at the time of bidding, and is incorporated or formed in another state.

The bidding disadvantage provisions do not apply to public works projects exempt from competitive bidding requirements.

If the legislation conflicts with federal requirements that are a prescribed condition to the allocation of federal funds to the state or a local authority, the conflicting part is inoperative with respect to the agency directly affected.